

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

**TONY RAPATZ, ALICE GUERRA, and
KATHERINE GUERRA,**

Plaintiffs,

v.

No. 12-cv-0827 RHS/SMV

**JOE MARTINEZ , CHRISTIAN LOPEZ,
ROBERT VIGIL, DANNY PACHECO,
CITY OF ESPAÑOLA EMPLOYEES AND
SUPERVISORS JOHN/JANE DOES, and
CITY OF ESPAÑOLA,**

Defendants.

**ORDER REQUIRING PLAINTIFFS TO FILE A SUR-RESPONSE ON A
LIMITED QUESTION BY THE COURT**

THIS MATTER comes before the Court on Danny Pacheco's Motion to Dismiss Third Amended Complaint and for Qualified Immunity (Doc. 95). The Court has considered the motion together with the Plaintiffs' Response (Doc. 103) and Defendant Pacheco's Reply (Doc. 109). The Court finds it necessary to require the Plaintiffs to file a limited Sur-Response.

In paragraph 28 of the Third Amended Complaint (Doc. 78), the Plaintiffs assert that they claim damages "under 42 U.S.C. §1983 against defendants, CITY, ROBERT VIGIL, DANNY PACHECO, CHRISTIAN LOPEZ and JOE MARTINEZ for violations of their constitutional rights under color of law." The following paragraph names "Defendants" as having "raided the home of Plaintiffs" on May 12, 2010 (See Doc. 78 at ¶29). A reasonable reading of this allegation suggests that Defendant Pacheco is named as one of the persons present when the subject search warrant was executed on May 12, 2010.

Upon reviewing all of the respective submittals relative to the instant motion, it is clear that counsel for Defendant Pacheco is of the understanding that the Plaintiffs do not assert that Defendant Pacheco was physically present during this raid. The Court believes that the Plaintiffs do not intend to allege that Defendant Pacheco was personally present, but the language used in Paragraphs 28 and 29 of the Third Amended Complaint is unclear on the matter.

IT IS THEREFORE ORDERED that the Plaintiffs file a limited Sur-Response on or before July 1, 2014, advising the Court of whether they are alleging in their Third Amended Complaint (Doc. 78) that Defendant Danny Pacheco was physically present when the subject search warrant was executed on May 12, 2010.



ROBERT HAYES SCOTT
UNITED STATES MAGISTRATE JUDGE